FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

Second Appeal No. 420/2003
&
Second Appeal No. 422/2003

Appeal Application No. Writ petition	District : of 200

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : Smt. V. A. Naik, J.
DATED : March 12, 2007.

Heard Shri Talmale for the appellants, and Shri Somalwar for the respondent.

Since both these appeals arise from common judgment, they are being disposed of by this common order.

The appellants are the original defendants. A suit was filed by the respondent/ plaintiff against the appellants for recovery of an amount of Rs. 50,320/- along with interest thereon. The plaintiff is a financier and had advanced an amount of Rs. 50,000/- to the defendant no.1 by an agreement dated 18/1/2005. It is the case of the plaintiff that the defendant no.1 had been irregular in making the payment of installments and by an agreement dated 16/9/1990, the accounts of transactions were settled and the defendant no.1 had agreed to pay an amount of Rs. 68,000/- to the plaintiff within a

period of 12 months.

The defendant no.1 denied the claim of the plaintiff and submitted that the defendant no.1 had, in fact, approached the plaintiff for repayment of the entire loan amount of Rs. 32,738/- on 3/5/1988, but the plaintiff refused to accept the same. It was, therefore, pleaded by the defendant no.1 that the plaintiff was not entitled to recover anything more than Rs. 32,738/- which was due and payable on 3/5/1988.

The trial and the appellate Court considered the evidence tendered by the parties on record and held that the plaintiff had proved that an amount of Rs. 68,000/- was outstanding against the defendant no.1 on 16/9/1990. The Courts, however, held that the plaintiff was not entitled to interest @ 24% per annum, but was entitled to an interest @ 18% per annum on an amount of Rs. 68,000/-. The trial Court granted the interest from the date of institution of the suit whereas the appellate Court granted the interest with effect from 16/9/1990, the date on which the defendant no.1 had agreed to pay the amount of Rs. 68,000/- to the plaintiff-financier. The Courts did not accept the plea of the defendant no.1 that he had approached the plaintiff on 3/5/1988 with an amount of Rs. 32,738/- and that the plaintiff had refused to accept the same.

Shri Talmale, the learned counsel for the

appellants, submitted that the appellate Court was not justified in granting interest on interest when the grant of the same was prohibited under the provisions of the Interest Act. The counsel for the appellants then submitted that the Courts were not justified in decreeing the suit for an amount of Rs. 68,000/- with 18% interest thereon as the defendant no.1 had already approached the plaintiff on 3/5/1988 for the repayment of the entire loan amount which the plaintiff had refused to accept.

Shri Somalwar, the learned counsel for the respondent, supported the judgment of the appellate Court, and submitted that both the Courts have recorded a concurrent finding of fact and these second appeals are, therefore, liable to be dismissed. It is submitted on behalf of the respondent that the Courts have not, in fact, granted interest on interest as canvassed by the learned counsel for the appellants.

I have perused the judgments passed by both the Courts and have also perused the pleadings of both the parties. Though the loan was advanced to the defendant no.1 on 18/1/1985, the Courts have not granted interest to the plaintiff with effect from 18/1/1985 and have granted the same with effect from 16/9/1990, as the defendant no.1 had agreed to pay a sum of Rs. 68,000/- to the plaintiff within a period of 12 months from the

aforesaid date on the settlement of the accounts between the parties. Thus, it cannot be said to be a case of grant of interest on interest as claimed by the appellants. The other submission made on behalf of the appellants is also not acceptable as the Courts have categorically recorded a finding of fact that the defendant no.1 has failed to prove that he had approached the plaintiff on 3/5/1988 with an amount of Rs. 32,738/- and the plaintiff had refused to accept the same.

Since no substantial question of law arises for consideration in these second appeals, both second appeals are dismissed with no order as to costs.

JUDGE

RMP